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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/790,418

03/01/2004

Paolo Veglio

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EXAMINER

CRAIG, PAULA L

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

05/22/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/790,418

Applicant(s)

VEGLIO ET AL.

Examiner

Paula L. Craig

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 March 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 and 9-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 March 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

1. The rejections of Claim 8 are withdrawn as moot. The objections to the drawings are withdrawn in light of Applicant's amendment filed March 7, 2007. The objection to page 2, line 7 of the specification is withdrawn in light of Applicant's amendment filed March 7, 2007. The objections to Claims 4, 5, and 19 are withdrawn in light of Applicant's amendment filed March 7, 2007. The objection to Claim 20, line 13 regarding the use of the term "sanitary napkin" is withdrawn in light of Applicant's amendment filed March 7, 2007.

2. Applicant's arguments filed March 7, 2007 have been fully considered but they are not persuasive. Applicant argues that Anderson fails to disclose the topsheet and the backsheet including relatively hydrophobic nonwoven material, and that motivation is lacking in Meyer to change the topsheet of Anderson to be relatively hydrophobic nonwoven material. Applicant argues that the teaching in Anderson of the topsheet being any soft, smooth, compliant, porous material which will be comfortable against human skin and through which vaginal discharges will tend to pass, would lead the skilled person to a relatively hydrophilic nonwoven. This is not the case. Anderson teaches the preferred topsheet being a thermoplastic film such as those described in U.S. Patent No. 4,324,246 to Mullane or 4,341,217 to Ferguson et al. (Anderson, col. 5, lines 4-13; note Mullane '246 and Ferguson '217 are incorporated by reference in Anderson). Films are nonwoven materials. Mullane '246 teaches an apertured formed

film topsheet which is preferably hydrophobic (Mullane, Abstract, col. 4, lines 28-54 and Claim 1). Ferguson teaches a topsheet which is preferably a polyethylene film (Ferguson, col. 2, lines 48-68, col. 4, lines 42-51, col. 8, lines 60-67). Polyethylene is hydrophobic (see entry on polyethylene in Hawley's Condensed Chemical Dictionary). Anderson teaches that the most preferred topsheets include those described in U.S. Patent No. 4,342,314 to Radel and U.S. Patent No. 4,463,045 to Ahr et al. (Anderson, col. 5, lines 4-13; Radel and Ahr are incorporated by reference in Anderson). Radel teaches a hydrophobic topsheet which is nonwoven (Radel, col. 7, lines 37-49, col. 8, lines 7-57, col. 12, line 63 to col. 13, line 28; note that polyethylene is hydrophobic, as indicated above). Ahr teaches a hydrophobic apertured film topsheet which is nonwoven (Abstract, col. 18, lines 15-19, col. 21, lines 41-64; note that polyethylene is hydrophobic, as indicated above). Hydrophobic topsheets are commonly used in absorbent articles because they allow moisture to pass through into the underlying hydrophilic material, but do not absorb moisture themselves, thus maintaining a dry feeling on the surface that contacts the wearer's skin and preventing rewet. (This is sometimes described as a hydrophilic gradient or a contact angle gradient.) The use of a hydrophobic topsheet with an underlying relatively hydrophilic material is clearly described in Meyer '603, Abstract, col. 1, lines 16-22, col. 4, lines 28-36, col. 8, lines 11-20, col. 9, lines 17-28, col. 13, lines 12-16; also see col. 3, lines 6-28, col. 11, lines 14-39, col. 13, line 49 to col. 14, line 28). While Meyer teaches that the degree of hydrophobicity of the topsheet may optionally be adjusted if desired, Meyer does not teach adjusting the hydrophobicity so much as to make the topsheet hydrophilic (col. 4,

lines 56-57). Making the topsheet more hydrophilic than the core would defeat the purpose of the invention of Meyer, which is to set up a flow of moisture through the topsheet, the transport layer, and the core, in that order, leaving the topsheet with a dryer feel on its surface (Abstract, col. 2, line 64 to col. 4, line 36, col. 7, line 63 to col. 8, line 20). U.S. Patent No. 2,905,176 to Davidson also teaches a topsheet of hydrophobic material which allows moisture to pass through the topsheet into a hydrophilic material and does not permit the moisture to migrate back to the skin (col. 1, lines 29-52, col. 2, lines 24-60). Other references describing hydrophobic topsheets with hydrophilic absorbent cores and/or a hydrophilic gradient include U.S. Patent Nos. 3,871,378 to Duncan et al., 4,041,951 to Sanford, 5,217,445 to Young et al., 5,549,589 to Horney et al., 5,603,707 to Trombetta et al., 6,582,411 to Carstens et al., 5,807,363 to Hamajima et al., 5,658,639 to Curro et al., and 5,234,422 to Sneller et al.

3. Applicant also argues that the barrier layer of Anderson is the same length as the pantiliner and so extends outwardly beyond the core outer periphery. The claims do not require that the barrier layer should not extend outward beyond the core outer periphery at any point. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The barrier layer of Anderson is disclosed as being of substantially equal length as the pantiliner but having a smaller transverse width in at least some areas, allowing for ventilation in those areas, and is disposed within the core outer periphery in the ventilation areas (Figs. 1-3, col. 2, lines 33-61). While not necessary to the above analysis, note that sanitary napkins having

permeable topsheets and/or backsheets, together with barrier layers which do not extend outward beyond the core outer periphery at any point, are also known in the art (see U.S. Patent Nos. 2,964,040 to Ashton et al., 5,961,509 to Kling, 6,492,574 to Chen et al., and 4,713,069 to Wang et al.)

### ***Specification***

4. The objection to the specification as not providing antecedent basis for Claim 20 is maintained for the reasons of record.

### ***Claim Objections***

5. The objection to Claim 20, line 13 (now line 15 of Claim 20) to the term "liquid impermeable" is maintained for the reasons of record; note that without the suggested change, the phrase "said fluid impermeable" in Claim 20, line 16 would lack antecedent basis.

6. Claim 9 is objected to because of the following informalities: For Claim 9, line 1, "Claim 8" should be "Claim 1". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. The rejections of Claims 1-4, 7, 10, 12-15, 17, and 19 under 35 U.S.C. 103(a) as being unpatentable over Anderson (4,681,578) in view of Meyer (4,798,603) are

maintained for the reasons of record, as well as the reasons described above in paragraphs 1-3.

9. The rejections of Claims 5, 9, and 11 under 35 U.S.C. 103(a) as being unpatentable over Anderson in view of Meyer and further in view of Kudo (US 2003/0187417) are maintained for the reasons of record, as well as the reasons described above in paragraphs 1-3.

10. The rejections of Claims 6, 16, 18, and 20 under 35 U.S.C. 103(a) as being unpatentable over Anderson in view of Meyer and further in view of Carstens (US 6,582,411) are maintained for the reasons of record, as well as the reasons described above in paragraphs 1-3.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paula L. Craig whose telephone number is (571) 272-5964. The examiner can normally be reached on M-F 8:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Paula L Craig  
Examiner  
Art Unit 3761

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TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

